

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5373 of 1986

with

SPECIAL CIVIL APPLICATION No 222 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

C B SHUKLA

Versus

SECRETARY

Appearance:

1. Special Civil Application No. 5373 of 1986
MR SR BRAHMBHATT for Petitioners
MR LR PUJARI, A.G.P. for Respondents
2. Special Civil Application No 222 of 1987
MR SR BRAHMBHATT for Petitioners
MR LR PUJARI, A.G.P. for Respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision:04/05/98

C.A.V. JUDGEMENT

1. As in both these matters common questions of facts and law have arisen and identical reliefs have been claimed, the same are being taken up for hearing together and are being disposed of by this common order. The arguments have been advanced with reference to the special civil application No.5373/86 in which the respondents have also filed their reply.

2. The petitioners are the employees of the Sachivalaya of the Government of Gujarat at Gandhinagar. Prayer has been made by the petitioners for the declaration that they are entitled to the benefit of double salary and the proposed action of the respondents to recover the double salary paid to the petitioners for the strike period to be illegal and arbitrary. Different associations of the employees had given a call for general strike against the reservation made for scheduled tribe, scheduled caste and backward class candidates, and they remained on strike for the period from 17-6-1985 to 19-8-1985. So it was an anti-reservation movement. To give the benefits to the loyal employees/officers of the Government i.e. those employees/officers who have not participated in the said strike, the Government decided to give them the double payment of salary and in this respect, a resolution has been passed on 6th June, 1985 which came to be modified from time to time by different resolutions and in the present case we are concerned with the resolution of the Government dated 28th June, 1985. The petitioners have not participated in the strike observed for anti-reservation movement but during that strike period they went on strike in connection with their own demands which has no connection whatsoever with the anti-reservation movement and they remained on strike from 24th June, 1985 to 30th June, 1985. The petitioners were paid the double salary for the period from 7th June, 1985 to 24th June, 1985 but thereafter they were not paid the benefit of double salary and further the benefit of double salary paid to them has been ordered to be taken back from them on the ground that they have gone on strike. Hence, this special civil application before this Court.

3. The State Government has contested this special civil application and reply affidavit has been filed wherein the defence has been taken that the petitioners are not entitled for the benefit of payment of double salary as they went on strike. This defence is based on the condition as laid down in the resolution dated 28th June, 1985.

4. The learned counsel for the petitioners contended that the action of the respondents to withdrew the benefit which has been given to the petitioners of double payment of salary in pursuance of the resolutions dated 6th June, 1985 and 28th June, 1985 on the ground that they have gone on strike in connection with other demands is wholly arbitrary and unjustified as that benefit has been given to the employees of the Medical and Health Department who also went on strike in connection with their own demands. Carrying this contention further, the learned counsel for the petitioners contended that the extension of the benefit of double payment of salary to the employees of Medical and Health Department who are similarly situated to the petitioners and denying that benefit to the petitioners is clearly a hostile discrimination made.

5. The learned counsel for the State, on the other hand, contended that the case of the petitioners is clearly distinguishable from the case of the employees of the Medical and Health Department and as such, the plea of discrimination which has been made by the petitioners in this case is not tenable.

6. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties.

7. The resolution of the Government dated 28th June, 1985 has been filed by the petitioners in the special civil application No.222/87 as annexure 'A' at page No.19 and for the purpose of decision of these special civil applications, clause 'c' of the said resolution is relevant, which reads as under:

(c) The benefits of double payment will be in respect of only loyal employees; and therefore, if any employees resort to strike or Mass Casual Leave, subsequently it would be open for Government to cut the double payment made in accordance with the aforesaid policy at any time hereafter.

8. Mere reading of clause 'c' of the aforesaid resolution gives out that in case those loyal employees resort to strike or mass casual leave, it was open to the Government to cut the double payment made in accordance with the said policy decision. The petitioners admittedly went on strike for the period from 24th June, 1985 to 30th June, 1985. It is true that this strike of the petitioners has nothing to do with the anti-reservation movement but it is a fact that they have

gone on strike during the period during which anti-reservation movement strike was going on. In view of the stipulation as contained in clause 'c' of the resolution of the Government dated 28th June, 1985, the Government was perfectly legal and justified to cut the double payment of salary made to the petitioners under the said policy.

9. The benefit of double payment of salary was given to the members of the Gujarat Rajya Malaria Karmachari Mahamandal though the members of that Mahamandal had gone on strike also like the petitioners but it is suffice to say that the respondents in reply to the special civil application have given out the reasons to extend the benefit to those employees. The employees of the Gujarat Rajya Malaria Karmachari Mahamandal have to discharge the important programme of D.D.T. spraying and in case that programme is not carried out within time, the medicines would have been wasted which would have again affected the public health. The other reason has been given that to see that the public health is protected, D.D.T. spraying programme has to be carried out in time and to fulfill that public object as well as to save the medicines, a special call had been given by the Chief Minister for recalling of the strike by this class of persons and on the call of the Chief Minister that strike had been recalled and the programme of D.D.T. spraying etc. had been carried out and as a result thereof the Government had taken a decision to give the benefit of double payment to that class of employees. These pleadings made by the State Government in reply have not been controverted by the petitioners by filing rejoinder thereto. From the pleadings of the respondents I find that cogent and justified reasons have been given for extending the benefit of double payment of salary to the members of the Gujarat Rajya Malaria Karmachari Mahamandal and as such it cannot be said that the petitioners and those employees form a class. It is always open to the Government to give incentives and benefits to the class of persons to safeguard the public safety or public health as well as suffering of the loss by the Government. In such matters, the matter has to be examined from different considerations and plea of discrimination cannot be available to the other class of persons. The petitioners are Stenographers working in Sachivalaya and it is not the case where they were directed to recall their strike and resume the duties for the purpose of public health and welfare and to save the Government money from being wasted. The case of the petitioners is not comparable with that class of persons and the petitioners are of different class and in such

matters it cannot be said that any hostile discrimination has been made by the respondent-State by extending the benefit of double pay to the employees of Gujarat Rajya Malaria Karmachari Mahamandal.

10. The benefit of double payment of salary has been given under a policy laid down by the Government and though ordinarily that policy has to be strictly adhered to but still it is open to the Government in its own interest as well as in the interest of public health to make some deviation from the said policy. Whatever deviation is made, it is still a policy of the Government and in the policy decision this Court has very very limited power of judicial review. In the facts of the case, where the medicines costing heavily to the Government are likely to be wasted or where for want of time, the spraying of D.D.T. for the public health would have been put to hazard in case the incentives are being given to the employees concerned for this programme, it cannot be said that the Government has acted arbitrarily or it has made any hostile discrimination with the other class of persons who are not connected with the enforcement or carrying out any public health programmes or public safety programmes etc.. The Government was within its competence to modify its own policies in the larger interest.

done no exception can be taken to that action. I do not find any substance in the contention of the learned counsel for the petitioners which has been raised on the ground of discrimination.

11. No other point has been raised by the learned counsel for the petitioner.

12. In the result, these special civil applications fail and the same are dismissed. Rule discharged. Interim relief, if any, granted by this Court stands vacated.